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7 MATHEW HENLEY, et al.,
8 Plaintiffs,
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10 v.
11 RICHARD A. JACOBS,
12 Defendant.

13 Case No. [18-cv-02244-SBA](#)

14
15 **ORDER FOR PRETRIAL
16 PREPARATION**

17 Pursuant to Rule 16 of the Federal Rules of Civil Procedure (“FRCP”),
18 IT IS HEREBY ORDERED AS FOLLOWS:

19 **I. DEADLINE FOR JOINDER OF PARTIES/AMENDING THE PLEADINGS**

20 The deadline for the joinder of other parties and to amend the pleadings is March 14,
21 2019.

22 **II. DISCOVERY CUT-OFF**

23 All discovery, except for expert discovery, shall be completed and all depositions
24 taken on or before November 11, 2019. The deadline to file motions to compel is governed
by the Local Rules. Discovery disputes will be referred to a magistrate judge.

25 **III. EXPERT DESIGNATION AND DISCOVERY**

26 Plaintiff shall designate any experts by October 14, 2019; defendant by October 14,
27 2019; rebuttal disclosure by October 28, 2019. Any expert not so named may be disallowed
as a witness.

28 No expert will be permitted to testify to any opinion, or basis or support for an
opinion, that has not been disclosed in response to an appropriate question or interrogatory
from the opposing party.

29 Expert discovery shall be completed by November 25, 2019.

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2 **IV. MOTION PRACTICE**3 All dispositive motions shall be **heard** on or before December 11, 2019, at 2:00 p.m.4
5 **A. Meet and Confer Requirement: The parties must meet and confer prior**
6 **to filing any motion or request.** The movant shall certify to the Court in its moving papers
7 that it has complied with this requirement. Should the parties fail to meet and confer, the
Court may decline to entertain the motion.8
9 **B. Hearing Dates:** The Court does not reserve motion hearing dates. The
10 parties are advised to check Judge Armstrong's calendar at www.cand.uscourts.gov/sba to
11 determine the next available hearing date. The parties are advised **not** to wait until 35 days
prior to the law and motion cut-off to file and serve their motion. As the Court's law and
motion calendar tends to fill quickly, there is no guarantee that a hearing date within the law
and motion cut-off will be available.12
13 NOTE: Pursuant to Civil L.R. 7-1(b), the Court may, in its discretion, adjudicate
motions without oral argument.14
15 **C. Page Limits:** All noticed motions (other than motions for summary judgment)
16 and any opposition thereto, shall not exceed **fifteen (15) pages** in length, exclusive of the
table of contents, table of authorities, exhibits and declarations, if required. Reply briefs
may not exceed **ten (10) pages** in length.17
18 **D. Failure to Oppose:** The failure to timely file an opposition to any motion
shall constitute a consent to the granting of the motion.19
20 **E. Summary Judgment:** Parties are limited to filing one motion for summary
21 judgment. Any party wishing to exceed this limit must request leave of Court. Aligned
22 parties (i.e., co-defendants) should file joint briefs where possible. Motions for summary
23 judgment are subject to the page limits set forth in Civil Local Rule 7. If a Plaintiff wishes
24 to file a motion for summary judgment, they shall do so at least 6 weeks before the cut-off
date. If a Defendant desires to file a cross-motion, such motion shall be combined with the
opposition to the motion, not to exceed 25 pages, and shall be filed 14 days after the filing of
the motion. The opposition to any cross-motion shall be combined with the reply in support
of the motion, not exceed 15 pages, and shall be filed 7 days after the filing of the
opposition. A reply to any cross-motion, not to exceed 10 pages, shall be filed 7 days after
the filing of the opposition. Separate statements of undisputed facts will not be considered.
Joint statements of undisputed facts are helpful, but not required.25
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27 **F. Use of Dividers and Binders:** Courtesy copies of multi-page exhibits for
28 chambers should be clearly marked with tabbed dividers. Where the exhibits are
voluminous, courtesy copies shall be submitted in tabbed binders.

1 **V. MANDATORY SETTLEMENT CONFERENCES**

2 All parties are ordered to participate in a mandatory settlement conference during the
3 following time period: n/a

4 **VI. PRETRIAL CONFERENCE**

5 All Counsel who will try the case shall appear for a pretrial conference on March 11,
6 2020 at 2:00 p.m. All Counsel shall be fully prepared to discuss all aspects of the trial.
7 Failure to file the requisite pretrial documents in advance of the pretrial conference may
8 result in vacation of the pretrial conference and/or the imposition of sanctions.

9 **NOTE: Each party is required to have a person with full
settlement authority present at the pretrial conference.**

10 **VII. PRETRIAL PREPARATION**

11 Prior to the date pretrial preparation is due, Counsel shall meet and confer in good
12 faith in advance of complying with the following pretrial requirements in order to clarify and
13 narrow the issues for trial, arrive at stipulations of facts, simplify and shorten the
14 presentation of proof at trial, and explore possible settlement. In addition, Counsel shall
15 meet and confer regarding anticipated motions in limine, objections to evidence, jury
instructions, and any other matter which may require resolution by the Court.

16 The following briefing schedule applies to all pretrial documents:

FILINGS	DUE DATE
Pretrial Statement	1/15/20
Trial Briefs	
Findings of Fact	
Witness Lists	
Exhibit Lists	
Discovery Designations	
Proposed Jury Instructions	
Proposed Jury Voir Dire	
Proposed Verdict Forms	
Motions in Limine	1/29/20
Objections to Evidence	
Objections to Separately Proposed Jury Instructions	
Oppositions to Motions in Limine	2/5/20
Responses to Objections to Evidence	
Replies for Motions in Limine	2/12/20
Objections to Evidence (optional)	

1 A. **Joint Pretrial Statement:** Counsel are required to file a joint pretrial
conference statement containing the following information:

2 1. **The Action**

3 a. **Substance of the Action.** A brief description of the substance of
claims and defenses which remain to be decided.

4 b. **Relief Prayed.** A detailed statement of all the relief claimed,
particularly itemizing all elements of damages claimed as well as witnesses,
documents or other evidentiary material to be presented concerning the
amount of those damages.

5 2. **Factual Basis**

6 a. **Undisputed Facts.** A plain and concise statement of all relevant
facts not reasonably disputed, as well as those facts to which the parties will
stipulate without the necessity of supporting testimony or exhibits.

7 b. **Disputed Factual Issues.** A plain and concise statement of all
disputed factual issues which remain to be decided.

8 c. **Agreed Statement.** A statement assessing whether all or part of
the action may be presented upon an agreed statement of facts.

9 3. **Disputed Legal Issues**

10 Without extended legal argument, a concise statement of each disputed
point of law concerning liability or relief, citing supporting statutes and
decisions. Unless otherwise ordered, parties should cite to briefs served and
lodged setting forth briefly the nature of each party's contentions concerning
each disputed point of law, including procedural and evidentiary issues.

11 4. **Stipulations**

12 A statement of stipulations requested or proposed for pretrial or trial
purposes.

13 B. **Trial Briefs**

14 Each party shall serve and file a trial brief which shall briefly state their contentions,
the relevant facts to be proven at trial, and the law on the issues material to the decision.

1 **C. Findings of Fact & Conclusions of Law (non-jury trial)**

2 In non-jury cases, each party shall serve and lodge with the Court proposed findings
3 of fact and conclusions of law on all material issues. Findings shall be brief, clear, written in
4 plain English and free of pejorative language and argument.

5 **D. Jury Instructions**

6 The parties shall file a joint set of proposed jury instructions that sets forth those
7 instructions on which the parties have reached agreement. As to any disputed instructions,
8 each party shall also file its “separately proposed” instruction(s) supported by a brief
9 memorandum setting forth the authority for its use. Responses or objections to any
10 “separately proposed” jury instruction shall be filed in accordance with briefing schedule set
11 forth above. All instructions shall be written in plain English that is comprehensible to
12 jurors, concise and free of argument, and organized in a logical fashion so as to aid jury
13 comprehension. Copies of the joint and separate proposed instructions shall be provided as
14 Word documents on a USB drive or CD. The Court's practice is to utilize, whenever
15 possible, instructions found in the Ninth Circuit Manual of Model Jury Instructions.

16 **E. Jury Voir Dire**

17 Each party shall file proposed questions for jury voir dire.

18 **F. Verdict Forms**

19 Each party shall file a proposed form of verdict.

20 **G. Witnesses**

21 Each party shall serve and file with the Court a list of all persons who may be called
22 as witnesses. The list shall include a summary of the substance of each witness' proposed
23 testimony. Retained and non-retained expert witnesses shall be identified as such.

24 **H. Exhibits**

25 Each party shall serve and file a list of all exhibits anticipated to be used at the trial.
26 The exhibit list shall identify each exhibit by number and include a brief description,
27 followed by two blank columns to record the date on which it is marked for identification
28 and the date on which it is admitted into evidence. Exhibits shall be premarked numerically,
 with Plaintiff's exhibits preceded by the letter “P” (i.e., P1, P2, P3) and Defendant's exhibits
 preceded by the letter “D” (i.e., D1, D2, D3). Exhibit markers shall also contain the case
 name and number, with space to record the date admitted and the Deputy Clerk's initials. (A
 sample exhibit list and exhibit markers are available in the Court's Standing Orders).

1 Exhibits should be brought to Court on the first day of trial. Each party shall provide
2 every other party one set of exhibits to be used at trial. Additionally, the Court requires one
3 original version of exhibits (as described above) for the Clerk and two copies (one for the
4 Bench and one for the witness stand). Each set of exhibits, including the originals, shall be
premarked and indexed into a binder for easy and quick reference, with a copy of the full
exhibit list at the front of the binder.

5 **I. Designation of Discovery Excerpts**

6 Each party expecting to use discovery excerpts as part of its case in chief shall serve
7 and lodge with the Court a statement identifying: (1) by witness and page and line, all
8 deposition testimony and (2) by lodged excerpt, all interrogatory answers and requests for
9 admissions. Each interrogatory answer intended to be offered as an exhibit shall be copied
separately and marked as an exhibit. The original of any deposition to be used at trial must
be produced at the time of trial, along with a copy for the Court.

10 If Counsel intend to present video or audio deposition testimony in lieu of live
11 testimony pursuant to Federal Rule of Evidence 804(b)(1), and the parties are unable to
12 reach a stipulation regarding the presentation of such testimony, the presenting party shall
13 notify the Court of this fact at the time it files its designations and provide the reason for the
14 witness' unavailability. See Fed. R. Evid. 804(a).

15 **J. Motions in Limine and Objections to Evidence**

16 Motions in limine ("MILs") shall be set forth in a **single memorandum**, not to
17 exceed fifteen (15) pages in length. Responses to the MILs shall be set forth in a single
18 memorandum, not to exceed fifteen (15) pages in length. Reply briefs shall not exceed ten
19 (10) pages. No MIL will be considered unless the parties certify that they met and conferred
20 prior to its filing. Any request to exceed the page limits must be submitted prior to the filing
deadline and supported by a showing of good cause, along with a certification that the
applicant has met and conferred with the opposing party regarding the request.

21 Objections to evidence shall identify the exhibit, discovery excerpt, and/or deposition
22 designation in dispute, indicate the basis for the objection (e.g., hearsay - FRE 802), and
23 provide a brief statement in support thereof. Objections to deposition designations shall also
24 include any counter-designations for completeness. See Fed. R. Evid. 106. For any
25 deposition designations to which objections are raised, the parties shall provide a complete
26 transcript with the designated portions thereof highlighted. The objecting party shall file the
transcript as a searchable PDF and provide a printed courtesy copy. No objection will be
considered unless the parties certify that they met and conferred prior to its filing.
Responses to objections shall provide a brief statement in opposition (e.g., falls under an
exception or offered for non-hearsay purpose). Replies are not required.

1 **VIII. TRIAL DATE**

2 Trial before the Jury will begin on March 23, 2020, at 10:00 a.m., for an estimated 5-
3 6 trial days, or as soon thereafter as the Court may designate. The parties are advised that
4 they must be prepared to go to trial on a trailing basis in the event that more than one case is
5 set for trial on the same date. Trial will take place at 1301 Clay Street, Oakland, California,
6 94612 (Courtroom to be determined at the pretrial conference). The Court's trial hours are
7 10:00 a.m. to 3:30 p.m., with two fifteen-minute breaks, from Monday through Friday.

6 **NOTE: Each party is required to have someone with full
7 settlement authority present on the first day of trial.**

8 **IX. TRANSCRIPTS**

9 If transcripts will be requested during or immediately after the trial, arrangements
10 must be made with the Court Reporter Coordinator (Telephone No. 510-637-3534) at least
11 one week prior to the commencement of trial commences.

12 **X. STATUS AND DISCOVERY CONFERENCES**

13 Any party desiring to confer with the Court may, upon notice to all other parties,
14 arrange a conference through the courtroom deputy clerk (Telephone No. 510-637-3542).
15 Conferences may be conducted telephonically, upon request (preferably in writing).

16 **XI. SANCTIONS**

17 Failure to comply with this order may result in the imposition of sanctions pursuant to
18 FRCP 16(f).

19 **IT IS SO ORDERED.**

20 Dated: January 17, 2019

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SAUNDRA BROWN ARMSTRONG
22 Senior United States District Judge